



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 7618-98
16 March 2000

[REDACTED]

Dear [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board was unsuccessful in obtaining your military records and had to conduct its review from the 17 July 1995 Naval Discharge Review Board (NDRB) case summary. As a result, the Board found that you enlisted in the Navy on 10 August 1989 for four years at age 18. You were advanced to AEAN (E-3) and served without incident until 31 January 1991 when you received nonjudicial punishment (NJP) for insubordination to a superior petty officer. Thereafter, you were formally counseled regarding an absence from your appointed place of duty and insubordination. You served without further incident until 11 November 1991 when you received a second NJP for three more instances of insubordination.

On 12 November 1991 you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were advised of your procedural rights, declined to consult with counsel, and waived the right to present your case to an administrative discharge board (ADB). On the same day, the commanding officer recommended that you be discharged under other

than honorable conditions by reason of misconduct due to commission of a serious offense. The Chief of Naval Personnel approved the recommendation and you were discharged under other than honorable conditions on 15 January 1992.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact it has been eight years since you were discharged. The Board noted the issues you presented to the NDRB and your current contentions that the discharge was too severe for the offenses and that it prevented you from going back to school and buying a house. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given the serious offenses for which you received two NJPs. The Board noted the aggravating factors that you failed to learn from the experience of your first disciplinary action and you waived your right to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Absent available records, a presumption exists that the action taken by the Navy to discharge you was appropriate and proper. There is no indication of procedural error which would tend to jeopardize your rights. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director